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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,143	12/02/2003	David K. Swanson	015916-301	5314

21836 7590 06/14/2006

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EXAMINER

ROANE, AARON F

ART UNIT PAPER NUMBER

3739

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10 and 27-38, drawn to a surgical probe and system, classified in class 606, subclass 049.
- II. Claims 11-26, drawn to a surgical method, classified in class 606, subclass 041.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the surgical probe and system may be used to heat tissue as opposed to form lesions.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Upon the election of group I or II, this application contains claims directed to the following patentably distinct species: specie #1 characterized by figure 1, specie #2 characterized by figure 2, species #3 characterized by figure 6B, specie #4 characterized by figures 8-13, specie #5 characterized by figures 7, 14 and 15, specie #6 characterized by figure 16, specie #7 characterized by figures 17-24 and 24, specie #8 characterized by figure 24A, specie #9 characterized by figure 24B, specie #10 characterized by figures 24C-24H, specie # 11 characterized by figures 25-28, specie #12 characterized by figure 27A, specie #13 characterized by figure 31A, specie #14 characterized by figure 29-32, specie #15 characterized by figures 33-36, specie #16 characterized by figures 37 and 38 and specie #17 characterized by figures 39 and 40. The species are independent or distinct because they are patentably distinct and mutually exclusive.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

A telephone call was made to Craig A. Slavin (Reg. No. 35,362) on 6/5/2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.R. *A.R.*
June 9, 2006

Michael Peffley
MICHAEL PEFFLEY
PRIMARY EXAMINER